

Senate Daily Reader

Wednesday, February 04, 2004

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State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

159J0065

HOUSE ENGROSSED NO. **HB 1005** - 01/27/2004

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Hargens, Christensen, Davis, Hackl, Hanson, Hundstad, Koistinen, McCoy, Weems, and Wick and Senators Symens, Albers, Dempster, Kleven, and Knudson at the request of the Interim Committee on Property Tax Exemptions

1 FOR AN ACT ENTITLED, An Act to require counties to determine the unreserved,
2 undesignated general fund balance at certain times of the fiscal year and to publish and
3 report this information.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 7-21-18.1 be amended to read as follows:

6 7-21-18.1. The total ~~unobligated~~ unreserved, undesignated fund balance of ~~all funds~~ the
7 general fund may not exceed forty percent of the total amount of all general fund appropriations
8 contained in the budget for the next fiscal year. The total unreserved, undesignated fund balance
9 of the general fund of the county as of March thirty-first and September thirtieth shall be
10 published in the minutes of the proceedings of the board of county commissioners and reported
11 to the Department of Legislative Audit. The report shall be on forms prescribed by the
12 Department of Legislative Audit.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0194

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1012** - 02/02/2004

Introduced by: The Committee on Judiciary at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to revise the definition of a victim for purposes of
2 determining who is permitted to speak on behalf of a victim at the time of sentencing.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-27-1.1 be amended to read as follows:

5 23A-27-1.1. Upon request to the court by a victim and before imposing sentence on a
6 defendant, the victim, in the discretion of the court, may address the court concerning the
7 emotional, physical, and monetary impact of the defendant's crime upon ~~him or her~~ the victim
8 and the victim's family, and may comment upon the sentence which may be imposed upon the
9 defendant.

10 The defendant shall be permitted to respond to such statements orally or by presentation of
11 evidence; and shall be granted a reasonable continuance to refute any inaccurate or false charges
12 or statements.

13 For the purpose of this section, the word "~~victim~~" term, victim, shall be construed to mean
14 the actual victim or the parent, spouse, ~~or~~ next of kin, legal or physical custodian, guardian,
15 foster parent, case worker, domestic violence advocate, or mental health counselor of any actual



- 1 victim who is ~~deceased~~, incompetent by reason of age or physical condition, who is deceased,
- 2 or whom the court ~~shall find~~ finds otherwise unable to comment.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0195

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1013** - 02/02/2004

Introduced by: The Committee on Judiciary at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to require notice to the attorney general of appeals in certain
2 juvenile proceedings regarding abuse and neglect, children in need of supervision, or
3 delinquency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 26-7A-112 be amended to read as follows:

6 26-7A-112. An intermediate appeal or an appeal may be taken from a judgment, decree, or
7 order under the provisions of this chapter and chapters 26-8A, 26-8B, and 26-8C according to
8 the rules of procedure governing civil appeals. The appellant shall also serve the written notice
9 of appeal and docketing statement upon the attorney general. However, the failure to serve
10 notice of the appeal on the attorney general does not constitute a jurisdictional bar to the appeal.
11 Initials shall appear on the appeal record documents in place of the names of the child and the
12 child's parents, guardian, or custodian who are parties to the action.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0323

HOUSE ENGROSSED NO. **HB 1023** - 01/22/2004

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Agriculture

1 FOR AN ACT ENTITLED, An Act to revise the scope of services provided by the state fire
2 equipment shop and to authorize the shop to charge for costs incurred for rural fire
3 assistance programs.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 34-31-6 be amended to read as follows:

6 34-31-6. The ~~secretary of agriculture or his designee~~ Department of Agriculture shall operate
7 a fire equipment shop to acquire and renovate equipment and distribute fire equipment, supplies
8 and parts, that are not available through the Bureau of Administration, and federal and state
9 excess vehicles and property to counties and ~~volunteer rural~~ fire departments or districts for the
10 suppression of rural fires. The department may charge recipients for reasonable direct and
11 indirect costs of providing such rural fire equipment, vehicles, and supplies to counties and rural
12 fire departments or districts. The department may administer federal and state cost assistance
13 programs related to such rural fire protection. The vehicles and property may be provided with
14 clear title by the ~~division~~ department to counties and ~~volunteer rural~~ fire departments or districts,
15 or the title may be retained by the state or federal government.



1 Section 2. That § 34-31-8 be amended to read as follows:

2 34-31-8. Notwithstanding the provisions of § 5-23-2, the ~~secretary of agriculture or his~~
3 ~~designee~~ Department of Agriculture may purchase used motor vehicles and equipment at
4 auctions of federal and state surplus property, or from public and private utility companies,
5 irrespective of whether or not the sellers of ~~said~~ the vehicles are licensed dealers as required by
6 § 5-23-2, for distribution to fire departments or districts for fire suppression. The department
7 may charge recipients for reasonable direct and indirect costs of providing such rural fire
8 equipment, vehicles, and supplies to counties and rural fire departments or districts. The
9 department may administer federal and state cost assistance programs related to such rural fire
10 protection.

11 Section 3. That § 34-31-9 be repealed.

12 ~~— 34-31-9. The secretary of agriculture may promulgate rules pursuant to chapter 1-26~~
13 ~~concerning:~~

14 ~~— (1) — The procedures for cost/share payments to the counties and volunteer fire~~
15 ~~departments;~~

16 ~~— (2) — The procedures for the acquisition and renovation of equipment; and~~

17 ~~— (3) — The procedures for the distribution of federal and state excess property.~~

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0322

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1024** -

01/20/2004

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Agriculture

1 FOR AN ACT ENTITLED, An Act to authorize counties to use the South Dakota grassland fire
2 index to regulate the use of fireworks.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-37-19 be amended to read as follows:

5 34-37-19. Any county may, by resolution, regulate or prohibit the use of fireworks outside
6 the boundaries of any municipality in those areas where the fire danger, as determined by use
7 of the ~~rangeland fire index as established by rule promulgated pursuant to chapter 1-26, by the~~
8 ~~secretary of agriculture~~ South Dakota grassland fire danger index published by the National
9 Weather Service, has reached the extreme category in that county during the period from June
10 twentieth to July second, inclusive. During such period, the county's action is suspended if the
11 ~~rangeland fire~~ grassland fire danger index falls below the very high category and shall again
12 become effective if the ~~rangeland fire~~ grassland fire danger index reaches the extreme category.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0387

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1060** -

01/22/2004

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Game, Fish and Parks

1 FOR AN ACT ENTITLED, An Act to permit dependent children of resident active duty military
2 service persons to obtain deer and antelope hunting licenses under certain circumstances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 41-6-21 be amended to read as follows:

5 41-6-21. The Game, Fish and Parks Commission may, by rules ~~adopted~~ promulgated
6 pursuant to § 41-2-18, set the number of licenses issued for the hunting, taking, or killing of any
7 big game animal during any season and establish who ~~shall be~~ is eligible to apply for such
8 licenses. Any person in the armed services of the United States who is absent from this state on
9 active duty during the entire time for making application, and is otherwise qualified and a
10 resident of South Dakota, may apply for and shall receive deer and west river antelope licenses.

11 In addition, any spouse and any minor dependent child of such a person in the armed services
12 who ~~is~~ are also absent from this state during the entire time for making application, and ~~is~~ are
13 otherwise qualified, may apply for and shall receive deer and west river antelope licenses. In
14 establishing eligibility, the commission may give preference to persons who actually operate or



1 live as owner or tenant on agricultural, timber, or grazing lands situated within the areas opened
2 to such big game hunting. It is a Class 2 misdemeanor for anyone to apply for such licenses
3 except those persons whose eligibility has been established by statute or rule of the Game, Fish
4 and Parks Commission.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

673J0491

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 91** - 02/02/2004

Introduced by: Senators Duniphan, Albers, Apa, Bogue, Brown, de Hueck, Dempster, Dennert, Diedrich (Larry), Duenwald, Duxbury, Earley, Ham-Burr, Kelly, Kleven, Kloucek, Knudson, Koetzle, Koskan, LaPointe, McCracken, Moore, Napoli, Olson (Ed), Reedy, Schoenbeck, Sutton (Dan), Sutton (Duane), and Vitter and Representatives Adelstein, Bartling, Bradford, Buckingham, Burg, Christensen, Cradduck, Cutler, Dykstra, Elliott, Frost, Fryslie, Garnos, Gassman, Gillespie, Hanson, Hargens, Haverly, Heineman, Hennies, Hundstad, Hunhoff, Juhnke, Klaudt, Konold, Kraus, Lange, LaRue, Lintz, Madsen, McCoy, McLaughlin, Michels, Murschel, Novstrup, Olson (Ryan), Pederson (Gordon), Peterson (Bill), Peterson (Jim), Putnam, Rave, Rhoden, Rounds, Schafer, Sebert, Sigdestad, Smidt, Solum, Teupel, Valandra, Van Etten, Van Gerpen, Van Norman, Weems, Wick, and Williamson

1 FOR AN ACT ENTITLED, An Act to appropriate money to the Ellsworth Air Force Base task
2 force to promote and facilitate the retention of Ellsworth Air Force Base.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the general fund the sum of three hundred fifty
5 thousand dollars (\$350,000), or so much thereof as may be necessary, to the Department of
6 Military and Veterans' Affairs for a grant to the Ellsworth Air Force Base Task Force to promote
7 and facilitate the retention and possible expansion of Ellsworth Air Force Base. The task force
8 shall report to the Executive Board of the Legislative Research Council every six months
9 beginning on or about November 1, 2004.

10 Section 2. The adjutant general shall approve vouchers and the state auditor shall draw



1 warrants to pay expenditures authorized by this Act.

2 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by

3 June 30, 2005, shall revert in accordance with § 4-8-21.

State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

394J0546

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 93** - 02/02/2004

Introduced by: Senators Albers, Dempster, Duniphan, Koetzle, Moore, Olson (Ed), Schoenbeck, and Sutton (Dan) and Representatives Gillespie, Buckingham, Christensen, Cutler, Dykstra, Hennies, Kraus, LaRue, Murschel, and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to provide that certain third and subsequent violations of
2 protection orders are felony offenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 25-10-13 be amended to read as follows:

5 25-10-13. If a temporary protection order or a protection order is granted pursuant to this
6 chapter, and the respondent or person to be restrained knows of the order, violation of the order
7 is a Class 1 misdemeanor. If any violation of this section constitutes an assault pursuant to
8 § 22-18-1.1, the violation is a Class 6 felony. If a respondent or person to be restrained has been
9 convicted of, or entered a plea of guilty to, two or more violations of this section within five
10 years of committing the current offense, the respondent or person to be restrained is guilty of
11 a Class 6 felony for any third or subsequent offense. Any proceeding under this chapter is in
12 addition to other civil or criminal remedies.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

574J0759

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 164** - 02/02/2004

Introduced by: Senators Symens and Bogue and Representatives Peterson (Bill) and Olson
(Mel)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the county zoning
2 laws.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 11-2-49 be amended to read as follows:

5 11-2-49. Except as otherwise provided by § 11-2-60, the board shall provide for the
6 appointment of a board of adjustment, or for the planning and zoning commission to act as a
7 board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of
8 this chapter, shall provide that the board of adjustment may ~~approve administrative actions,~~
9 ~~remedies, and procedures as authorized by § 11-2-53,~~ in appropriate cases and subject to
10 appropriate conditions and safeguards, grant variances to the terms of the ordinance.

11 Section 2. That § 11-2-53 be amended to read as follows:

12 11-2-53. The board of adjustment may:

13 (1) Hear and decide appeals if it is alleged there is error in any order, requirement,
14 decision, or determination made by an administrative official in the enforcement of
15 this chapter or of any ordinance adopted pursuant to this chapter; and



- (2) Authorize upon appeal in specific cases such variance from terms of the ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance is observed and substantial justice done; and
- ~~(3) Approve certain conditional uses upon a showing by an applicant that standards and criteria stated in a relevant ordinance enacted pursuant to § 11-2-17.2 will be met.~~

Section 3. That § 11-2-58 be amended to read as follows:

11-2-58. In exercising the powers mentioned in § 11-2-53, ~~all decisions of the board of adjustment to grant variances or conditional uses or in hearing appeals from any administrative order, requirement, decision, or determination may be appealed to the board of county commissioners in accordance with the county ordinance, and any final decision of the board of adjustment or county commission shall be deemed a final administrative decision not subject to referendum or review. However, any aggrieved person or legal entity has the right to appeal as allowed in § 11-2-61~~ the board of adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end has all the powers of the officer from whom the appeal is taken.

Section 4. That § 11-2-59 be amended to read as follows:

11-2-59. The concurring vote of two-thirds of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation ~~or conditional use~~ in the ordinance.

Section 5. That § 11-2-60 be amended to read as follows:

11-2-60. In lieu of appointing the board of adjustment provided by § 11-2-49, the board of county commissioners having adopted and in effect a zoning ordinance may act as and perform all the duties and exercise the powers of the board of adjustment. The chair of the board of county commissioners is chair of the board of adjustment as so composed. The concurring vote of at least two-thirds of the members of the board as so composed is necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variation ~~or conditional use~~ in the ordinance.

Section 6. That § 11-2-61 be amended to read as follows:

11-2-61. Any person or ~~legal entity aggrieved by a decision of the board of adjustment or board of county commissioners~~ persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty days after the filing of the decision in the office of the board of adjustment ~~or the office of the board of county commissioners.~~

Section 7. That § 11-2-67 be repealed.

~~11-2-67. Any permit, issued pursuant to this chapter, for a dairy or other animal feeding operation in compliance with such standards and criteria, including any permit for future expansion, shall be a vested compensable property right under the laws of South Dakota, but may be revoked for good cause.~~

Section 8. That § 11-2-17.2 be repealed.

~~11-2-17.2. Any board of county commissioners may, by ordinance, referable pursuant to~~

1 ~~chapter 7-18A, adopt, amend, and repeal as many classifications of conditional uses as may be~~
2 ~~proper and necessary to regulate land development activities. Each ordinance providing for such~~
3 ~~conditional use shall establish standards and criteria sufficient to enable the board of adjustment~~
4 ~~to approve or disapprove proposed land development projects and to issue or deny appropriate~~
5 ~~permits pursuant to §§ 11-2-53 and 11-2-58 to 11-2-60, inclusive. Such standards and criteria~~
6 ~~shall include both general requirements for all conditional uses and, insofar as practicable,~~
7 ~~requirements specific to each designated conditional use.~~

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

636J0726

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 171** - 02/02/2004

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senator Olson (Ed) and Representatives Sebert, Olson (Mel), and Sigdestad

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the organization of
2 civil townships.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 8-1 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any township may be reestablished pursuant to this Act if such township contains at least
7 five resident voters. For the purposes of this Act, the term, reestablishment, means organizing
8 a township that has been dissolved.

9 Section 2. That chapter 8-1 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any township may be reestablished subject to approval by the voters in any unorganized
12 congressional township as provided in this Act, if:

- 13 (1) The board of county commissioners proposes that the township be reestablished; or
14 (2) Fifteen percent of the registered voters residing in the affected township petition the
15 board of county commissioners proposing that the township be reestablished.



1 Section 3. That chapter 8-1 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 If one of the conditions of section 2 of this Act is met, the board of county commissioners
4 shall hold a public hearing to consider the proposed reestablishment. The hearing may be
5 conducted in conjunction with a regularly scheduled meeting of the board. At least twenty days
6 before the hearing, the board shall publish notice of the hearing in the official newspapers of the
7 county.

8 Section 4. That chapter 8-4 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Following the hearing required in section 3 of this Act, the proposed reestablishment shall
11 be decided by the voters of the affected civil townships on the date set for the township election
12 by the board of county commissioners. Any registered voter residing in the affected portion of
13 an unorganized congressional township shall be afforded the opportunity to vote. If a majority
14 of the votes cast in the township are in favor of the proposed reestablishment, the proposal shall
15 be implemented as provided in this chapter.